



March 14, 2019

Marlene H. Dortch, Esq.  
Secretary  
Federal Communications Commission  
445 12th Street SW  
Washington DC 20554

Re: Notice of Ex Parte Communication, MB Docket No. 17-105

Dear Ms. Dortch:

On March 12, 2019, representatives of the National Association of Broadcasters (NAB) met with staff of the Media Bureau to discuss the above-captioned proceeding. A list of meeting attendees is attached.

At the meeting, NAB representatives acknowledged that several rule changes have been made as part of the media modernization effort and others are in progress. We thanked the staff for their work on these items. We highlighted other potential rules that could be eliminated or streamlined based on our media modernization comments and concerns raised by member stations since the close of the comment cycle:

**Quarterly Issues/Programs Lists.** Consistent with our comments, NAB urged the Commission to eliminate the requirement that stations create and place in their public files detailed quarterly issues/programs lists.<sup>1</sup> We stated that the Commission should replace this requirement with an annual programming compliance report, which would rely more on certifications, rather than unnecessary granular detail about specific programs.<sup>2</sup> Under the current rule, quarterly issues/programs lists must contain a narrative description of “what issues were given significant treatment and the programming that provided this treatment, including “the time, date, duration, and title of each program in which the issue was treated.”<sup>3</sup> In our comments, we proposed that the annual programming compliance report

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<sup>1</sup> Comments of NAB, MB Docket No. 17-105 (Jul. 5, 2017) (NAB Comments) at 6-10.

<sup>2</sup> NAB Comments at 5 (proposing to replace the following quarterly filing requirements with the annual programming compliance report: (1) issues/programs lists; (2) children’s television programming reports; and (3) certifications and supporting documentation relating to limits on commercial matter in children’s TV programming)

<sup>3</sup> 47 C.F.R. §§73.3526(e)(11)(i) and (12); 73.3527(e)(8).

include a certification that the licensee has provided programming responsive to issues of concern to its community of license during the past year.<sup>4</sup>

There is no evidence in the record that members of the public rely on the quarterly issues/programs lists to gauge whether stations are serving the needs and interests of their local communities. We also observed that removing the current quarterly issues/programs lists requirement would not change stations' statutory obligation or business incentives to provide programming responsive to issues of concern to their local communities.

If the Commission does not adopt a certification approach, it should replace the current quarterly issues/programs list with a requirement that each station annually place in its public file a document identifying community issues addressed by the station and providing a list of programs that provided the most significant treatment of these issues. This annual submission to the public file would not list every program that covered or referred to those community issues; any list of programs need only be sufficient to show that the issues identified were given significant treatment by the station during the past year. The FCC also should eliminate or at least reduce the level of granular detail associated with any required program listing, particularly as to the precise time, day and/or duration of the identified programming. Those details have not and do not serve any meaningful purpose.

**Telephone Broadcast Rule.** As discussed in our reply comments in this proceeding,<sup>5</sup> NAB agrees with proposals to eliminate the Telephone Broadcast Rule.<sup>6</sup> The rule provides that, before broadcasting or recording a telephone conversation for later broadcast, a licensee must inform any party to the call of its intention to broadcast the conversation, except where such party is aware, or may be presumed to be aware from the circumstances of the conversation, that it is being or likely will be broadcast.<sup>7</sup> The rule applies only to over-the-air broadcasters. When the Commission last upheld the rule in 1988 on the grounds that it was necessary to protect privacy, there were few means by which a phone conversation could be easily and widely disseminated to the public. Today, however, the landscape is far different. As RTDNA observed, apart from federal and state privacy protections that apply across platforms, other digital or print journalists are "free to record a telephone conversation without ever disclosing that they might later post audio or video on their website, disseminate the recording over ubiquitous social media platforms, or simply publish a

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<sup>4</sup> NAB Comments at 8. Under our proposal, licensees would be required to fully explain any inability to certify, and individual licensees would determine the programming records they wish to maintain to support their certifications and to address any consumer complaints, challenges to their license renewals, or FCC inquiries or enforcement actions. *Id.*

<sup>5</sup> Reply Comments of NAB, MB Docket No. 17-105 (Aug. 4, 2017) at 7.

<sup>6</sup> Comments of the Radio Television Digital News Association, MB Docket No. 17-105 (Jul. 5, 2017) (RTDNA Comments); Comments of CBS Corporation, The Walt Disney Company, 21st Century Fox, Inc. and Univision Communications Inc., MB Docket No. 17-105 (Jul. 5, 2017) at 4.

<sup>7</sup> 47 C.F.R. § 73.1206.

verbatim transcript in print or online.”<sup>8</sup> The rule only serves to restrict broadcast journalists’ communications and impede their ability to engage in investigative journalism. Because the rule is antiquated, imposes discriminatory burdens on broadcast journalists, and fails to advance privacy goals, it should be eliminated.

**Broadcast Ownership Reports (FCC Form 2100, Schedule 323/323-E).** Currently, broadcast licensees and parties holding attributable interests in broadcast entities must file ownership reports: (i) within 30 days of initial licensing; (ii) biennially on December 1 of each odd calendar year (reflecting their ownership structure as of October 1 of that year); and (iii) within 30 days of consummation of an assignment or transfer of control.<sup>9</sup>

During the meeting, NAB observed that some licensees must file ownership reports multiple times during the biennial filing period because of transactions. To reduce the burdens associated with multiple ownership report filings, we urged the Commission to grant a blanket waiver of the requirement to file post-consummation ownership reports that would be due in a biennial filing year. Specifically, if a licensee closed a transaction anytime between December 2, 2018, and October 1, 2019, it would not file a post-consummation ownership report (which would be due sometime between January 1 and November 1, 2019). Instead, it would file only a biennial report that reflects its ownership structure as of October 1, 2019. We stated that this change would allow licensees and their attributable interest holders some relief from ownership reporting burdens without interfering with the Commission’s ability to analyze ownership data over time.

**Pro Forma Assignments/Transfers of Control.** NAB urged the Commission to consider reducing burdens arising from the obligation to seek prior Commission approval for “pro forma” assignments and transfers of control of licenses—transactions where the controlling party does not change.<sup>10</sup> We urged the Commission to consider granting pro forma transaction relief comparable to what has already been approved for other Title III licensees:

- 1) **Cable Television Relay Service (CARS) Streamlining.** The FCC should extend its definition of what constitutes a pro forma transfer of control of a CARS license to broadcast licenses. Under the CARS standard, changes that involve entities in the middle of an ownership chain are not considered changes in control, so no filing is required. Only transactions involving a change in the ultimate parent company or the licensee entity require an pro forma application.<sup>11</sup> A similar approach could reduce

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<sup>8</sup> RTDNA Comments at 2.

<sup>9</sup> 47 C.F.R. § 73.3615.

<sup>10</sup> 47 C.F.R. § 73.3540(f).

<sup>11</sup> 47 C.F.R. § 78.35(c). *See also Amendment of Part 78 of the Commission's Rules Concerning Licensing Procedures and Reporting Requirements in the Cable Television Relay Service*, 100 F.C.C.2d 1136, 1140-41 (1985) (“[W]e see no need for FCC approval in cases where ownership transfer does not result in a change in the identity of the licensee or the ultimate controlling interest of the licensee. Section 310(d) requires Commission approval only when a license is transferred to another person or when control of a corporation holding

the number of pro forma applications broadcasters must file without impacting the Commission's statutory obligations.

- 2) **Non-Common Carrier Space Station and Earth Station Streamlining.** Pro forma assignment/transfer applications of non-common carrier space station and earth station licenses are deemed granted one business day after filing.<sup>12</sup> The Commission's adopted this streamlined review process after determining that pro forma applications "do not raise public interest concerns, and the Commission's review is limited to determining that they are, in fact, pro forma in nature."<sup>13</sup> The Commission stated that the "deemed-granted" approach would provide licensees with greater certainty in the timing of proposed restructurings, and would still permit interested parties and the Commission to challenge or revisit the grant.<sup>14</sup> Modernizing the broadcast pro forma application process would similarly benefit broadcast licensees in their proposed restructurings without eliminating checks on the accuracy of pro forma filings.

NAB appreciates the Commission's ongoing efforts to modernize its media regulations, and looks forward to working with FCC staff on additional modernization proceedings.

Respectfully submitted,



Erin L. Dozier  
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Legal and Regulatory Affairs

cc: Michelle Carey, Sarah Whitesell, Holly Saurer

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a license is transferred. Thus, Section 310(d) does not appear to require FCC approval of ownership changes that do not involve a change in the identity or controlling interest of the licensee. Pro forma, or 'short form,' assignments or transfers of control which do involve such changes will continue to require approval.").

<sup>12</sup> *Comprehensive Review of Licensing and Operating Rules for Satellite Services*, 30 FCC Rcd 14713, 14810 ¶ 305 (2015).

<sup>13</sup> *Id.*

<sup>14</sup> *Id.*

## Meeting Attendees

### FCC Media Bureau Staff

Michelle Carey  
Sarah Whitesell  
Holly Saurer

### National Association of Broadcasters Staff

Rick Kaplan  
Erin Dozier  
Emmy Parsons